

SANITIZED DECISION--DOCKET NOS. 05-563 P & 05-564 P--GEORGE V. PIPER, ALJ--SUBMITTED for DECISION on JANUARY 11, 2006--ISSUED on JANUARY 20, 2006

SYNOPSIS

PERSONAL INCOME TAX--BURDEN OF PROOF--Failure of the Petitioner to appear at hearing and to prove that the assessment is incorrect and contrary to law, in whole or in part, mandate that the same be upheld *in toto*. See W. Va. Code § 11-10A-10(e) [2002] and W. Va Code St. R §§ 121-1- 63.1 & 69.2 (Apr. 20, 2003).

FINAL DECISION

On August 30, 2005, the Internal Auditing Division (“the Division”) of the West Virginia State Tax Commissioner’s Office (“the Commissioner” or “the Respondent”) issued a personal income tax assessment against the Petitioner. This assessment was issued pursuant to the authorization of the State Tax Commissioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code. The assessment was for the year 2003, for tax and interest, through August 30, 2005, and additions to tax, for a total assessed liability. Written notice of this assessment was served on the Petitioner.

Also on August 30, 2005, the Commissioner (by the Division) issued a personal income tax assessment against the Petitioner, under the provisions of Chapter 11, Articles 10 and 21 of the West Virginia Code, for the year 2004, for tax and interest, through August 30, 2005, and additions to tax, for total assessed liability. Written notice of this assessment was also served on the Petitioner.

Thereafter, by mail postmarked October 25, 2005, the Petitioner timely filed with this tribunal, the West Virginia Office of Tax Appeals, petitions for reassessment. See W.Va. Code § 11-10A-8(1) [2002].

Subsequently, notice of a hearing on the petition was sent to the parties and a hearing was held in accordance with the provisions of W.Va Code § 11-10A-10 [2002] and W.Va. Code St. R §121-1-61.3.3 (Apr. 20, 2003).

There was no appearance on behalf of the Petitioner when the hearing was convened. The hearing was held, however, without an appearance on behalf of the Petitioner, *see* W.Va Code § 11-10A-10(a) [2002] and W.Va. Code St. R. § 121-1-69.1 (Apr. 20, 2003).

FINDINGS OF FACT

1. In his petition for reassessment Petitioner presented a rambling discourse about why he was not a “United States citizen, not a United States person and had no dealings with nor income from a United States source.”

2. Notwithstanding the above, Petitioner’s W-2 that he received from his employer reflects that the Petitioner received a salary in both the states of Ohio and West Virginia as an employee of that company; however, Petitioner did not report same on either his 2003 or 2004 West Virginia resident income tax returns.

3. At hearing Respondent’s counsel presented evidence that Petitioner has two (2) vehicles titled in the state of West Virginia, which undermines Petitioner’s argument that he is not a West Virginia resident. More importantly, Petitioner’s residence is listed in numerous official documents as [a specific address within] West Virginia.

DISCUSSION

The only issue is whether the Petitioner has shown that the assessment is incorrect, and contrary to law, in whole or in part.

In this case Petitioner has shown absolutely nothing to meet his burden of proof that the assessment is incorrect, while the record is replete with proof that he owes same.

CONCLUSIONS OF LAW

Based upon all of the above it is **HELD** that:

1. In a hearing before the West Virginia Office of Tax Appeals on a petition for reassessment, the burden of proof is upon a petitioner-taxpayer, to show that the assessment is incorrect and contrary to law, in whole or in part. *See* W. Va. Code § 11-10A-10(e) [2002] and W. Va. Code St. R § 121-1- 63.1 (Apr. 20, 2003).

2. The Petitioner- taxpayer in this matter failed to carry the burden of proof with respect to his contention that he does not owe any West Virginia income tax. *See* W.Va. Code St. R. § 121-1-69.2 (Apr. 20, 2003).

DISPOSITION

WHEREFORE, it is the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioners for the year 2003, for tax, interest, and additions to tax, **totaling**, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W.Va. Code § 11-10-14 (a) [2002], **interest accrues** on this personal income tax assessment until this liability is fully paid.

It is **ALSO** the **FINAL DECISION** of the **WEST VIRGINIA OFFICE OF TAX APPEALS** that the personal income tax assessment issued against the Petitioner for the year 2004, for tax, interest, and additions to tax, **totaling**, should be and is hereby **AFFIRMED**.

Pursuant to the provisions of W.Va Code § 11-10-17 (a) [2002], **interest accrues** on this personal income tax assessment until this liability is fully paid.